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August 15, 2017

Hon. Glenn T. Suddaby
Chief United States District Judge
Northern District of New York
James M. Hanley Federal Building
100 S. Clinton St.
Syracuse, NY 13261

**Re: United States v. Gilbert Rosa Sanchez
16-CR-342 (GTS)**

Dear Judge Suddaby:

Please accept this letter as the Defendant's reply to the Government's sentencing submission.

At page two of its sentencing memorandum, the Government asserts that Mr. Rosa Sanchez was "the distributor of multi-kilogram quantities of cocaine to other members of the conspiracy". Mr. Rosa Sanchez denies this and states that he only distributed cocaine to Nicholas Peralta. Moreover, in terms of the Government's assertion that Mr. Rosa Sanchez is deserving of a four-level upward adjustment pursuant to U.S.S.G. §3B1.1(a), we draw the Court's attention to a DEA report dated August 26, 2016, which contained a summary of a telephone conversation where Mr. Peralta was clearly giving instructions to Mr. Rosa Sanchez. The DEA report states as follows:

7. At approximately 5:58 PM, an incoming telephone conversation (call# 1554) was intercepted in Spanish on SUBJECT TELEPHONE #4 between ROSA SANCHEZ and a male believed to be Nicolas PERALTA on 315-266-8800. During that conversation, PERALTA stated "You know what Francis? I think I'm going to need your help, I want to see, do you remember where I put the thing away in the garage?" ROSA SANCHEZ asked "Who's that?" PERALTA then advised ROSA SANCHEZ that the individual he left the barbershop with was from Rome, NY. ROSA SANCHEZ stated that he did not know that individual. PERALTA then stated "The kid from Rome. I, I haven't wanted to send him to get involved with that thing there, so he can go in there ... at least go get it and give it to him." ROSA SANCHEZ then agreed to go to the garage that PERALTA was referencing. PERALTA asked "You know where I put it away. Didn't you see where it's at?" ROSA SANCHEZ replied "Yes, yes, I know, I know, but, how do I open it?"

This conversation demonstrates that Mr. Rosa Sanchez is not an organizer or leader. In fact, it appears from the foregoing call that Mr. Peralta exercised a leadership role over Mr. Rosa Sanchez and that Mr. Peralta had more knowledge than Mr. Rosa Sanchez as to the other participants in the conspiracy. In fact, as DEA Agent Phelan wrote at paragraph 158 of a search

warrant application dated October 9th, 2016, “your affiant believes that Nicolas "Audi" PERALTA called Gilbert ROSA SANCHEZ for the purpose of **instructing** him to obtain narcotics from a stash location that is located within 520 Albany Street, Utica, NY, and deliver the drugs to an individual at 343/345 Bleecker St., Utica, NY.” We also draw the Court’s attention to paragraph 155 of the same search warrant application which states “PERALTA then **instructed** ROSA SANCHEZ to, “[c]ount how many there are, and be sure of how many there are.” The fact that Mr. Peralta is “instructing” Mr. Rosa Sanchez greatly diminishes the Government’s argument.

In terms of the Government’s assertion that Mr. Rosa Sanchez is deserving of a two-level enhancement, under U.S.S.G. §2D1.1(b)(12), for “maintaining a premises for the purpose of distributing a controlled substance” based on the defendant’s use of the garage located at 328 Gilbert Street, Utica, NY, we draw the Court’s attention to paragraph 73 of the October 9th, 2016, search warrant application which states:

73. At approximately 3:01 PM, ROSA SANCHEZ arrived at 161 1/2 Campbell Avenue, Yorkville, NY in the Honda Civic, as witnessed by surveillance. ROSA SANCHEZ proceeded to open the trunk of the Honda Civic, grabbed a dark colored bag from the trunk of the Civic, and entered the main door of 161 1/2 Campbell Avenue, as witnessed by surveillance. At approximately 3:05 PM, ROSA SANCHEZ exited the main door of 161 1/2 Campbell Avenue without the bag, entered his vehicle and left 161 1/2 Campbell Avenue, as observed by surveillance.

74. Based on your affiant's training, experience, and knowledge of this investigation, your affiant believes that RODRIGUEZ ZAP AT A delivered the three (3) kilograms of cocaine (as discussed in the text message conversations above) to ROSA SANCHEZ at the 328 Gilbert Street garage. ROSA SANCHEZ then transferred the drugs to 161 1/2 Campbell Avenue, a known stash location for the ROSA SANCHEZ/RIVERA DTO.

This also calls into question the Government’s assertion in its sentencing memorandum that Mr. Rosa-Sanchez stored this quantity of cocaine, or a portion thereof at 328 Gilbert Street. (Gov. Br. 4).

Moreover, in terms of Mr. Rosa Sanchez being an organizer, or a high-ranking member of the conspiracy, we note that unlike some of his co-defendants Mr. Rosa Sanchez did not own any properties and that he does not have any significant assets.

Yours truly,

/s

Daniel DeMaria

cc: Carla B. Freedman